IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 12TH SEPTEMBER 2006 / 21ST BHADRA 1928

ST.Rev..No. 377 of 2004()

TA.647/2001 DTD.2.5.2002 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVISION PETITIONER/RESPONDENT/REVENUE.

STATE OF KERALA, REP. BY DEPUTY COMMISSIONER(LAW), COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.V.V.ASOKAN

RESPONDENT: APPELLANT/ASSESSEE.

M/S.VICTORY OFFSET, PRINTERS, KUNNAMKULAM.

BY ADV. SRI.KMV.PANDALAI

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 12/09/2006, ALONG WITH STRV NO. 416 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO.377 & 416 OF 2004

Dated this the 12th day of September, 2006

JUDGMENT

Ramachandran Nair,J.

Heard Special Government Pleader for the petitioner and counsel appearing for the respondent-assessee. While the case of the department is that printed materials are sold by the respondent-assessee, the case of the respondent is that all the printing was done against orders of the customers and so much so turnover assessable is entitled to exemption under item 8 of Notification SRO 1727/93. The notification provides for exemption to printing presses engaged in printing and supplying on contract basis with regard to their turnover relating to transfer of goods involved in the execution of works contract under clause (iv) of sub-section (1) of Section 5. The assessing officer has stated in the assessment that invoices raised by the respondent show sale of printing materials and therefore he assumed that transactions are out-right sale attracting sales tax. If standard products are sold, even though made against advance orders, the same

may amount to sale of goods. However, if products like, diaries, calendars, marriage invitation cards, etc. are printed against prior orders then turnover of such sales should be assessed for works contract under Section 5(1)(iv) and exemption provided under the above notification is only on such turnover. Therefore what is required is to identify each and every sale with reference to prior orders if any given by the awarder and if transactions are found to be works contract, respondent is entitled to exemption on transfer of goods involved in the execution of works contract. If any transaction is not proved as works contract by producing contract, then sales have to be assessed as out-right sales as such sales are not works contract assessable under Section 5(1)(iv) of the Act. If transactions are found to be works contract, then it is upto the Officer to consider whether liability under Section 5A is attracted on purchase which is not seen considered in this case, because officer has treated the entire transaction as sales. The Tribunal has also not considered the matter with reference to contracts. Therefore we feel, the matter requires fresh consideration by the Tribunal particularly because, respondent has produced copies of some of the work orders

from Kerala Civil Supplies Corporation, and Ernakulam District Co-op. Bank which are on the face of it work orders to be assessed to works contract entitling the respondent for exemption. We therefore set aside the orders of the Tribunal and remand matter back to the Tribunal for reconsidering respondent's claim of exemption with reference to copies of contracts to be produced by the respondent. It would be open to the Tribunal to direct the assessing officer to verify the contracts and accounts and to call for report from the Officer with regard to liability under Section 5(1)(iv) and eligibility for exemption thereon and liability under Section 5A and pass final orders after receiving report from the Assessing Officer. ST Revisions are disposed of vacating the orders of the Tribunal with direction to them to issue fresh orders as directed above after hearing both sides within four months from the date of receipt of a copy of this judgment.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge